

INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

WASHINGTON, D.C. 20408

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August 23, 1973

MEMORANDUM FOR: MEMBERS, INTERAGENCY CLASSIFICATION
REVIEW COMMITTEE

FROM: ADRIENNE THOMAS *AT*

SUBJECT: MINUTES - AUGUST 8 ICRC MEETING

Enclosed please find the Minutes of the August 8 Interagency Classification Review Committee meeting.

The ICRC Appeals Procedure, which was approved at the August 8 meeting, has been submitted to the Federal Register for publication and will be printed shortly.

INTERAGENCY CLASSIFICATION REVIEW COMMITTEE

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MINUTES OF AUGUST 8, 1973
MEETING OF THE INTERAGENCY CLASSIFICATION
REVIEW COMMITTEE

Participants:

James B. Rhoads, Acting Chairman
George Aldrich, State
David O. Cooke, Defense
Osborne Day, NSC
Robert G. Dixon, Justice

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[REDACTED]
Charles L. Marshall, AEC
James E. O'Neill, Archives

STATINTL

Attending:

[REDACTED]
Joseph L. Liebling, Defense
Douglas Marvin, Justice
Dudley Mccum, OMB
Mark Spiegel, State
Adrienne Thomas, Archives

Proceedings:

Dr. Rhoads first introduced Mr. George Aldrich, who was representing the State Department, to the members.

Dr. Rhoads made the following announcements:

1. Colonel Richard Kennedy, NSC, informed him this morning, August 8, that the request by Professor Barton Bernstein for the declassification of correspondence between President Kennedy and Chairman Khrushchev regarding the Cuban missile crisis had been agreed to by NSC and that the material will be made available. Colonel Kennedy asked the Committee to delay informing Professor Bernstein of the decision until NSC had formally notified the Committee by letter. Copies of the documents will be furnished to Professor Bernstein when formal declassification action is completed. The documents will also be published by the Department of State in its Bulletin.

2. A decision has been made by General Haig that the staff office for the Committee's Executive Director and his staff is to be transferred to the National Archives, both administratively and physically. Dr. Rhoads told the Committee members he argued against this proposal because he felt that the prestige attached to the Committee and its work, as well as the effectiveness of the Executive Director, would be enhanced by remaining a part of the White House.

Mr. Marshall felt that Dr. Rhoads' arguments were very cogent ones and he asked if the decision were reversible. He felt that the Committee members should have a chance to voice their opinions in the matter. Mr. Dixon agreed with Mr. Marshall. Mr. Marshall also stated that he thought the Executive Director, and his staff, should be a part of NSC and, along with the permanent Chairman, should be assigned office space in the Executive Office Building.

Mr. Dixon suggested that a letter be written to General Haig expressing deep regret that the Committee had not been consulted in advance of his decision.

STAT

[] thought the letter to General Haig could also be used as an argument regarding the necessity for appointing a permanent Chairman.

At the end of the discussion it was agreed that a letter will be sent to General Haig regarding the location of the staff which will ask that General Haig reexamine his decision at the time a permanent Chairman is selected. Dr. Rhoads agreed to draft the letter which would then be circulated to the Committee members for comment before it is transmitted to General Haig.

Agenda items were then discussed:

1. The Committee members were asked if there were any corrections to be made in the Minutes of the last meeting.

STAT

[] suggested that the words "relating to intelligence sources and methods" be added to the sentence ending...CIA's declassification appeals cases. (Item 3, page 3). He pointed out that the CIA had not questioned the ICRC's jurisdiction over CIA appeal cases not involving intelligence sources and methods.

STAT

[] also suggested that the words "in the Order" be added to the end of the last sentence in the last paragraph of Item 3, page 4.

The Minutes were then accepted.

Dr. Rhoads reported briefly on the work of the Ad Hoc Group on Exemption Authority and Classification Guides. The Group held its first meeting on July 12, and a draft of its report has been prepared and circulated. It will be discussed at the next meeting of the Group, which is scheduled for August 9. Ambassador Blake hopes to have the final report completed by September, so that it may be circulated to the Committee members and discussed at the October meeting of the ICRC.

2. Dr. O'Neill discussed copying Top Secret documents for purposes of declassification review. He pointed out that agencies are now working under a "gentlemen's agreement" in connection with reproducing Top Secret documents originated by other agencies, and that the agencies are at variance with the NSC Directive. He suggested amended language to the NSC Directive which would permit reproduction of classified documents for purposes of declassification review and preservation.

STAT suggested that the same goal could be accomplished through a memorandum of agreement to be signed by the Committee members which would allow reproduction of classified documents to facilitate declassification review. This procedure would avoid the problem of amending the NSC Directive.

It was agreed that the National Archives will draft a Memorandum of Agreement to be sent to all agencies. The draft will be circulated to the members of the Committee before the next meeting so that final action can be taken.

3. Mr. Dixon stated that after due consideration Justice feels that the Committee should adopt the language of the June 4, 1973 draft of the ICRC Appeals Procedure. This would allow the Committee complete discretion in accepting appeals. The Committee agreed that as a matter of policy every effort would be made to accept each appeal made to the ICRC. The Committee voted that the Appeals Procedure as it appears in the June 4, 1973, draft, be accepted and published in the Federal Register.

4. Clarification of Section 11 of Executive Order 11652 was discussed. Dr. O'Neill distributed to the members, copies of proposed procedures for handling mandatory declassification review of Presidential documents, which includes the creation of an appeals board within the National Archives and Records Service. He pointed out that he was submitting only a draft outline and asked for comments from the members, particularly on Items A3 and B3. He noted that the National Archives would

like to stay within the time frame established by the Executive Order. Dr. O'Neill also asked the members to look closely at Section B.

Dr. Rhoads stated that he did not think it was necessary to get the reaction of the members at this particular meeting, but that he would like to know if there were any objections to the establishment of an appeals board within the National Archives.

The members agreed that the idea appeared to be a good one, but they would withhold final judgment until they had the chance to review the proposal more closely.

Mr. Cooke asked whether Section 11 of the Executive Order has any validity for documents not in the custody of the National Archives. He also inquired whether as a practical matter the Archives Appeal Committee would ever overrule the NSC on a declassification matter. Mr. Cooke also showed the members a National Security Council memorandum dated April 16, 1971 signed by the Staff Secretary, Jeanne Davis, which indicated that the NSC wanted to be consulted on the declassification of any White House document. Mr. Cooke asked whether Section 11, which grants the Archivist declassification authority over White House originated documents, supercedes this NSC memorandum. Dr. Rhoads stated that a strong case can be made for separating NSC originated documents from other White House originated documents. This would allow NSC to review NSC originated documents, but would permit the Archivist to make the final determination on other White House originated documents. Dr. Rhoads felt that Section 11 of E.O. 11652 does supercede the NSC memo of April 16, 1971.

Mr. Day said that in his opinion NSC would definitely want to review their own documents but would not necessarily want to review all other White House originated documents. He stated that he would discuss this subject with the appropriate people in NSC and would report his findings to the ICRC.

5. (Agenda Item 6) The appeal of Louis Kruh for the Presidential document establishing the National Security Agency was discussed. Mr. Kruh's request was made to the Archivist of the United States because it was a Presidential document. The declassification request was denied on the advice of the Department of Defense and NSA by Dr. O'Neill as Acting Archivist of the United States.

Mr. Cooke pointed out that when the request was made, it should have been sent to NSC but it was sent to NSA instead. NSA objected to the declassification of the document. The request had been referred to Mr. Tufaro in May, who had in turn referred it to the Archivist.

Dr. O'Neill said that as far as the denial is concerned, it had been a legal response under Section 11 of the Executive Order and that, while NSC had not been consulted, it now had the opportunity to endorse or overrule the denial. Mr. Day indicated that NSC agreed with the original denial. In addition, DOD, AEC, and CIA informally endorsed the denial.

Mr. Dixon requested that the vote on the appeal be postponed until he had a chance to discuss the matter with the Attorney General. Mr. Dixon felt that because the Attorney General has had wide experience in Government that he might provide some sound advice on the question of whether the document should be declassified. This was agreed to. After Mr. Dixon has consulted with the Attorney General, he will call Dr. Rhoads; it will then be decided whether a telephone vote will be taken to resolve the matter or whether it should be discussed further at the next ICRC meeting.

The next meeting was scheduled for September 5 at 10:00 a.m. in the Roosevelt Room.